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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/585,389	06/02/2000	Takeki Yazaki	NIT-200	5623

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EXAMINER

QURESHI, SHABANA

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/585,389

Applicant(s)

YAZAKI ET AL.

Examiner

Shabana Qureshi

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Response to Amendment

Claims 10 –20 have been canceled in this application. Claims 1 and 6 were amended. Claims 1-9 are pending in this Office Action.

Arguments filed 24 June 2004 have been considered and new grounds of rejection have been applied by the Examiner in this office action.

With regards to Applicant's argument that Teraslinna does not consider or solve the problem of unused contract bandwidth, Examiner has combined US Patent 6,470,016 issued to Kalkunte et al. to that of Teraslinna to more distinctly reject the limitations argued and amended.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,812,525 issued to Teraslinna in view of US Patent 6,470,016 issued to Kalkunte et al.

Art Unit: 2155

With regards to claims 1 and 6, Teraslinna teaches a bandwidth monitoring method suitable for use in a network, comprising the steps of:

- transmitting a specific type of packet in preference to packets other than the specific type of packets (column 4, lines 44-54);
- judging whether an inputted packet corresponds to the specific type of packets (column 2, lines 58-64); and
- monitoring whether the packets violate a contract bandwidth under contract with a source of specific type of packets (column 2, lines 48-52); and

Although Teraslinna seeks to efficiently use bandwidth without violating traffic contract bandwidth, Teraslinna does not explicitly state that the unused contract bandwidth of a specific type of packet is used for packets not of that specific type. However, Kalkunte teaches that:

- when the packets of the specific type do not violate the contract bandwidth and does not belong to the specific type, transmitting the packet as if it belonged to the specific type (column 15, lines 13-24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teaches of Teraslinna with the teaching above of Kalkunte so that unused bandwidth may be used most efficiently with weighted bandwidth allocation (Kalkunte et al, column 3, lines 30-50).

As per claim 2, Teraslinna in view of Kalkunte et al teach the bandwidth monitoring method according to claim 1, wherein the packet has a header, and the judging as to whether the packet corresponds to the specific type of packet is performed according to a value in the header (column 4, line 44-column 5, line 7).

Art Unit: 2155

As per claim 3, Teraslinna in view of Kalkunte et al teach the bandwidth monitoring method according to claim 2, further comprising the step of:

when the value in the header does not correspond to a specific value indicative of the specific type of packet, changing the value in the header to a specific value (column 5, lines 8-39).

As per claim 4, Teraslinna in view of Kalkunte et al teach the bandwidth monitoring method according 2, wherein the header has a priority field and the judging as to whether the packets correspond to the specific type of packet is performed according to the value in the priority field (column 4, lines 44-54).

As per claims 5 and 9, Teraslinna in view of Kalkunte et al teach the bandwidth monitoring method according to claim 1, wherein the monitoring is carried out by using a leaky bucket algorithm with a first depth of bucket when the packet is not the specific type of packet, and a leaky bucket algorithm with a second depth of bucket different from the first depth when the packet corresponds to the specific type of packet, thereby to judge whether or not the packet violates the contract bandwidth being under contract with the source of the packet (column 16, lines 1-47).

As per claim 7, Teraslinna in view of Kalkunte et al teach the bandwidth monitoring method according to claim 6. Kalkunte et al further teach the step of:

- transmitting the packet as a packet other than the specific type of packet when the bandwidth being used by the source of the packet exceeds the first bandwidth and the packet does not correspond to the specific type of packet (column 3, lines 30-59; column 4, lines 4-20).

Art Unit: 2155

As per claim 8, Teraslinna in view of Kalkunte et al teach the bandwidth monitoring method according to claim 6. Kalkunte et al further teach the step of:

- transmitting the packet as a packet other than the specific type of packet when the bandwidth being used by the source of the packet exceeds the contract bandwidth and the packet corresponds to the specific type of packet (column 3, lines 30-59; column 4, lines 4-20).

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shabana Qureshi whose telephone number is (703) 308-6118. The examiner can normally be reached on Monday - Friday, 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam can be reached on (703) 308-6662. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Shabana Qureshi
Examiner
Art Unit 2155

28 September, 2004


HOSAIN ALAM
SUPERVISORY PATENT EXAMINER